In the High Court of Uttaranchal, at Nainital.
Civil Writ Petition No.1662 (S/B) of 2002

Satendra Pal Singh S/o late Panna Singh

R/o Village Kannaur, Post Office

Rampur, District Ghaziabad ……Petitioner.

Versus

1- The Public Service Tribunal Uttaranchal.

2- The State of Uttaranchal through the Principal Secretary to Govt. Home Deptt. Civil Secretariat, Dehradun.

3- Inspector General of Police, Head Quarter Uttaranchal Dehradun.

4- Deputy Inspector General of Police, Kumaon Range, Nainital.

5- Senior Superintendent of Police, Nainital …… Respondents.

Sri Ramji Srivastave, Advocate for the petitioner.
Sri K.P. Upadhyaya, learned S.C. for the respondents.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: 18th May, 2006.

By way of this writ petition the petitioner has sought the relief for issuing a writ of certiorari quashing the order dated 8.3.1994 (Annexure No. 11) passed by the S.S.P., Nainital, order dated 30-5-1995 (Annexure No. 12) passed by Deputy Inspector General of Police, Kumaon Range, Nainital, Order dated 13.11.1996 (Annexure-13) passed by respondent No. 3, I.G., Police, Headquarter, Uttaranchal and judgment and order dated 13.8.2002 (Annexure No. 14) passed by Public Service Tribunal, Uttaranchal, Dehradun. The petitioner has further prayed for a writ of mandamus commanding the respondents to reinstate him in the service and grant regular prescribed pay scale along with back wages and interest and all the emoluments admissible to him.

2- Brief facts of the case are that the petitioner joined service as a Constable in Police Force in May, 1982. In the year 1993 he

proceeded on 15 days sanctioned leave w.e.f. 3.1.1993. As per the petitioner he fell ill and could not attend the duty till 3.9.1993 but meanwhile he kept on getting medical treatment both from private as well as Government Doctors and submitted leave applications along with the relevant medical certificates. The petitioner has further averred in the writ petition that the departmental authorities neither took steps to arrange proper medical treatment for petitioner nor responded to his aforesaid applications, they rather ordered a preliminary enquiry by deputing the then Circle Officer, Nainital and on the basis of his report served him with a charge sheet dated 25-5-1993 proposing a full dress disciplinary enquiry on the insinuation of unauthorized absence from duty. The petitioner replied to the charge sheet. Thereafter the Inquiry Officer submitted his report on 25-6-1993 indicating the petitioner guilty for unauthorized absence from duty from 18-1-1993 to 9-6-1993. The Disciplinary Authority felt that the proposed punishment suggested by the Inquiry Officer would be an inappropriate punishment, hence issued notice calling upon the petitioner to show cause as to why he should not be dismissed from the service. The petitioner responded by submitting his reply and submitted that the proposed punishment would be disproportionate indulgence.

3- The Disciplinary Authority however did not satisfy with the explanation of the petitioner and keeping in view the established guilt as well as past service record passed the order dispensing with his services. This order was confirmed by the Appellate as well as the Revisional Authorities.

4- The petitioner thereafter filed a claim petition before the Public Service Tribunal, Uttaranchal resisting the proceedings on all scope. It was pleaded that though the petitioner had proceeded on sanctioned leave and at a later stage informed the respondents about his illness yet he had not been able to substantiate his projected illness which restrained him from reporting on duty or taking treatment from the departmental hospitals. It was also pleaded that during the inquiry proceedings the petitioner himself voluntarily conceded his unauthorized absence. The Public Service Tribunal after having considered the entire evidence on

record and hearing learned counsel for the parties was pleased to dismissed the claim petition vide impugned judgment and order dated 13-8-2002. Which is contained in Annexure No. 14 to the writ petition.

5- Feeling aggrieved by the aforesaid impugned judgment and order, the petitioner has preferred the writ petition before this court.

6- The counter affidavit has been filed by the respondents stating therein that only two applications along with medical certificates were received by the department on 2.3.1993 which were sent by the petitioner seeking medical leave from 18-1-1993 to 31.1.1993 and thereafter from 1.2.1993 to 28.2.1993. Except these two applications no other application was received by the department regarding leave. It is also alleged that the aforesaid medical certificates have been obtained from the private practitioner who was not even a qualified M.B.B.S. Doctor and these medical certificates were not authorized to be considered in view of the para-381 and 382 of the Police Regulation. The respondents have further pleaded that as the petitioner never submitted any other medical evidence in support of his illness as such the absence of petitioner from 18.1.1993 to 9.6.1993 remained unauthorized and this unauthorized act of the petitioner is a example of gross misconduct specially in disciplined police force.

7- Heard learned counsel for the parties and perused the record.

8- In the instant case the petitioner has himself admitted his absence from duty although with a proposition of justification which appears to be unacceptable. The record shows that there was no lack or denial of opportunity to the petitioner. The defence of the genuineness of illness of the petitioner is not substantiated by any plausible manner. A simple dispatch of the purported medical certificates would not lend any credence to the story set up by the petitioner and it goes without saying that the certificates submitted by the petitioner before the department came from a private practitioner who was not even a qualified M.B.B.S. Doctor as this Doctor has not mentioned the serial number of his register in the

certificates and there is nothing before us to infer his authorized competence to issue such certificates.

9- Much emphasis has been put by the petitioner on the report submitted by the Inquiry Officer who proposed that the petitioner be brought down and can be stagnating in the minimum pay scale and for that period be regularized as treating him leave without pay. It was submitted by the learned counsel for the petitioner that the Disciplinary Authority erred in considering the report submitted by the Inquiry Officer and has passed the order of dismissal from the service without considering the past services of the petitioner.

10- The recommendation of the Inquiry Officer for quantum of punishment was dissented with by the Disciplinary Authority in view of his past service record and his conduct which by no means could be faulted. It is beside the point that before awarding the punishment, the petitioner was apprised both about the recommendation of the Inquiry Officer as well as the proposal of the punishing authority. It was of course within the compentence of the Disciplinary Authority to look into the past conduct while determining the extent of punishment.

11- Perusal of Annexure- 11, which is the dismissal order of the petitioner, contained in the writ petition, shows that the Disciplinary Authority has clearly observed therein that the petitioner during his tenure was brought down and kept stagnating at the minimum level of his pay scale for three years in connection with a case of consuming liquor during the duty period in the year 1992. It has also been observed by the Disciplinary Authority that in the year 1990 and 1992 the censure entry has been awarded to him. It has also been observed that for three times minor punishment on account of his absence from the duty has been imposed against the petitioner but inspite of these punishments he could not improve his conduct and again he remained absent for a long period in an unauthorized manner. The Disciplinary Authority has thus come to the conclusion that the petitioner has become the habitual offender which shows his grave misconduct and dereliction of duties and this type of person does not deserve to be kept in service further more.

12- The Hon'ble Apex Court in a case in **State of U.P. & others Vs. Ashok Kumar Singh and another** reported in **1996(1) SLR Supreme court page 291** has held as under:-

> *"We are clearly of the opinion that the High Court has exceeded its jurisdiction in modifying the punishment while concurring with the findings of the Tribunal on facts. The High Court failed to bear in mine that the first respondent was a police constable and was serving in a disciplined force demanding strict adherence to the rules and procedures more than any other department. Having noticed the fact that the first respondent has absented himself from duty without leave on several occasions. We are unable to appreciate the High Court's observation that 'his absence form duty would not amount to such a grave charge. ' Even otherwise on the facts of this case, there was no justification for the High Court to interfere with the punishment holding that 'the punishment does not commensurate with the gravity of the charge' especially when the High Court concurred with the findings of the Tribunal on facts. No case for interference with the punishment is made out."*

13- Keeping in view the aforesaid judgment of the Hon'ble Apex Court it is quite clear that the absence from duty of a Police Officer tantamounts to the gravest act of misconduct and permitting indulgence, one could not possibly take a different view for the simple reason that members of a uniformed force have to be a role model of discipline which the petitioner failed to observe.

14- Considering the entire material on the record, we are of the view that no interference is called for with the order of dismissal proceeded by departmental enquiry wherein misconduct of absence from duty was proved and we are also of the view that the order of dismissal has been rightly upheld by the superior authorities in the appeal as well as in the revision. Further the Public Service Tribunal has also not committed any error of law in dismissing the claim petition of the petitioner. The absence from duty by a police personnel should be treated as a gravest act of misconduct as has been held by the Hon'ble Apex Court in the above cited case. In the instant case the charge has been fully proved and the order of

dismissal is justified as per the law laid-down by the Hon'ble Apex Court hence there is no scope for interference.

15- The petition lacks merit and is liable to dismissed.

16- Accordingly the writ petition is dismissed. No order as to costs.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

ISB